D.B. CIVIL SPECIAL APPEAL (WRIT) NO.699/2006

Municipal Board Sri Karanpur Vs. Pyare Lal & Anr.

Date : 12.10.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HONBLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Ramanandeep S. Sindhu for the appellant.
Mr. Sandeep Shah for the respondent.

BY THE COURT:- (PER HON'BLE RAJESH BALIA, J.)

Having heard learned counsel for the appellant as well as the learned counsel for the respondent, we find that there is no merit in this appeal.

An award of reinstatement in favour of respondent-workman was passed by the Labour Court which was challenged by the Municipal Board, Srikaranpur. During the pendency of the writ petition, the respondent workman moved an application along with an affidavit that he has not been gainfully employed elsewhere at any time and he is entitled to receive full last drawn wages in terms of Section 17B of the

Industrial Disputes Act, 1947.

No reply to the application was moved by the appellant-employer contending that the workman was gainfully employed elsewhere. In view of the un-rebutted position on the affidavits of the parties, the learned Single Judge granted application under Section 17B and directed the appellant to pay the respondent full last drawn wages along with maintenance allowance admissible from the date of filing of the writ petition. The order is challenged inter alia on the ground that High Court in its discretion ought to have rejected this application by examining the question whether the appointment of respondent was valid or invalid.

We are unable to sustain the contention of learned counsel for the simple reason that the provisions of Section 17B are not directed to exercise discretion of the Court but is a mandate to the employer that notwithstanding his challenge to award of reinstatement before the High Court or Supreme Court, he will continue to pay the workman full last drawn wages along with

maintenance allowance during the pendency of the proceedings before the High Court or Supreme Court provided the workman has filed an affidavit before the Court that he has not been gainfully employed during any period. This liability continues during the pendency of the proceedings before the High Court or the Supreme Court as the case may be. Therefore, it is not a matter where the discretion vests with the Court to make an order or to not to make an order. On the contrary proviso to Section 17B envisages that after mandating the employer to pay the last drawn wages during the pendency of the proceedings before the High Court or Supreme Court where an award of reinstatement has been challenged, a negative order is required to be passed by Court on proof of the fact that the workman was gainfully employed for any period elsewhere to be submitted by the employer.

No issue has been joined by the appellant employer in terms of proviso to Sec.17 B.

Accordingly, the appeal fails and is hereby

dismissed.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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